IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO. 185 OF 2000.

Empreiteiros Gerais Private
Limited, having its Registered
Office at Anand Bhuvan,
Station Road, Margao. ... Appellants.

Versus

1. Gold Star Shipyard through

(i) Smt. Sampada Kishorelal
Karpe and
(ii) Mr. Kishorelal Ramnath
Karpe,
c/o. Dr. Costa Pereira
Building, Municipal Square,
Margao.

2. Gold Star Electrical and
General Co., through its
Partners:

(i) Kishorelal Ramnath Karpe,
(ii) Sampada Kishorelal Karpe,
c/o. Dwarka Building,
Near Cine Lata, Margao. ... Respondents.

Mr. A.F. Diniz, Advocate for the Appellants.

Coram : S.A. BOBDE AND
N.A. BRITTO, JJ.

Date : 28th June 2004.

ORAL JUDGMENT (PER BOBDE, J.)

This First Appeal is by unsuccessful plaintiffs, who sued the respondents for recovery of a barge by name EGL II alongwith a sum of money equal to the cost to be incurred by the plaintiffs /appellants for repairing the said barge. In the alternative the appellants sued for recovery at the market price of a new barge similar to EGL II and damages to the tune of Rs. 25,92,100/-.

2. The parties are hereinafter referred to as per their status before the trial Court.

3. The plaintiff, a company incorporated under the Companies Act, handed over a barge to the defendants for carrying out repairs. The name of the barge is EGL II. Apparently, before this barge, three other barges, by name Ganga Jal, Ganga Jamuna and Ganga Tarang, belonging not to the plaintiffs but one of its Directors, one G.N. Agrawal, were handed over for repairs. There is no dispute that those barges were returned after repairs. The bills for repairs remained unpaid.

4. The barge in question, that is, EGL II was handed over for repairs on or about 7th March 1978 without any advance payment. This barge was repaired by the defendants and kept ready for being undocked on or about 10th June 1978. The defendants raised a bill, dated 21st June 1978, towards the repairs of the barge EGL II, which was not accepted by the plaintiffs. On 6th July 1978, by a letter, the defendants requested the plaintiffs to take delivery of the barge EGL II as early as possible failing which the plaintiffs would be responsible to pay dock charges at the rate of Rs. 1,570/80 per day. According to the plaintiffs, the defendants' shipyard was closed down with effect from

1st August 1978; the barge was deliberately kept in the dry dock and, thus, the plaintiffs were prevented from taking possession. According to the plaintiffs the bill raised by the defendants for a sum of Rs. 2,13,830/85 was excessive and included an amount of Rs. 14,668/50, which was never agreed upon. This disputed amount purportedly was charged on account of idle labour charges or dock hire charges.

5. The suit was resisted by the defendants, who claimed that, at the time of negotiations, it was noticed by the defendants that they had not quoted the rate towards dry dock charges but the plaintiffs were informed about them. They pleaded a uniform practice of levy of dry dock charges. According to the defendants, the plaintiffs proposed a rate which was not acceptable to the defendants. However, the plaintiffs sent their barge to the defendants for repairs, which showed that they impliedly accepted the rate quoted by them.

6. According to the defendants as regards the barge in question, that is, EGL II, the plaintiffs delayed in carrying out the inspection of the barge as well as in supplying material, which resulted in keeping the labourers idle for many days. The defendants have only one dry dock and they were prevented by the plaintiffs from carrying out repairs and the workers

were kept idle for want of necessary raw material. The defendants claimed that though a bill for repair charges, dated 21st June 1978, was forwarded, no amount was paid and, therefore, the barge remained with the defendants. In short, the defendants claim that they have a right to detain the barge and have a lien on the barge till their bills are paid up.

7. The defendants pleaded that from the total bill of Rs. 2,13,830/85 the undisputed amount would be Rs. 98,802/45. However, the plaintiffs unilaterally reduced even that to Rs. 74,739/91.

8. The trial Court framed seven issues and answered them as follows:-

> "1. Whether the plaintiffs prove that the defendants have wrongfully detained the barge EGL II? ..Negative.
>
> 2. Whether the plaintiffs prove that the bill submitted by the defendants in respect of the barge EGL II includes items and ralis which were not agreed upon between the parties? .. Negative.
>
> 3. Whether the plaintiffs are entitled to recover from the defendants a sum of money equal to the cost to be incurred by the plaintiffs to get the said barge repaired and fit for navigation in the alternative? .. Negative.
>
> 4. Whether the plaintiffs prove that they are entitled to demand from the defendants the market price of a new

barge of the like kind as EGL II as on the date of decree? .. Negative.

5. Whether the plaintiffs prove that they are entitled to recover from the defendants Rs. 25,92,100/- by way of damages for wrongful detention of the barge from 10.6.1978 to 31.5.1981? .. Negative.

6. Whether the defendants prove that the plaintiffs owe to them Rs. 2,13,830.85 in respect of the barge EGL II? .. Affirmative.

7. Whether the defendants prove that they are entitled to detain the barge till the said amount is paid to them? .. Redundant."

It is obvious from the above that the trial Court has held that the defendants were right in detaining the barge EGL II and that the plaintiffs were not entitled to return of the barge. The trial Court found that the rates were agreed upon and that the plaintiffs owed a sum of Rs. 2,13,830/85.

9. Having heard the learned counsel for the appellants, it seems that the two crucial points that need to be decided by us are firstly, whether the defendants were entitled to levy an amount towards idle labour charge and dry dock charge. In short, whether the defendants' bill was excessive. The other important point that arises for consideration is whether they were entitled to retain the barge by way of a lien either under Section 170 or Section 171 of the Indian Contract Act, 1872.

10. As regards the first point, it is clear that neither of the parties produced a specific contract or rate regarding the repairs of the barge and that the plaintiffs handed over the barge on mutual trust and good faith. The plaintiffs have not sought any declaration that the defendants are only entitled to charge a sum of Rs. 74,739/91.

11. The trial Court found that the only witness produced by the plaintiffs was not present during negotiations. He appeared in Court because, according to him, he was in-charge of the barge section during the inquiry. The trial Court has observed that he failed to give satisfactory answers to material questions and instead told the Court that one Kesariwal, who was never examined, negotiated on behalf of the plaintiff company. The trial Court has found that since there is no evidence of mutually agreed rates, it cannot be said that the rate charged by the defendants was unwarranted on the basis of the evidence on record. We find that the trial Court has not fallen into any error in this regard. Further, on the evidence, there is no dispute that dry docking is an accepted procedure. In fact, P.W.1 in his cross-examination admitted that the plaintiffs, who were themselves in similar business, were charging Rs. 1,000/- to 2,000/- and some times even Rs. 5,000/- towards the charges of docking and

undocking vessels and that similar practice was followed in other shipyards. Now it must be noted that in this case the defendants have charged a sum of Rs. 1,570/80 per day for a period of about 73 days on the basis that the barge was handed over to the defendants on 7th March 1978, the period within which the repairs could have been carried out being 30 days. The trial Court has accepted the defendants' version that the barge was fully repaired on 16th June 1978, that is, within 30 days. Therefore, we do not find any error in the finding of the trial Court that the charges for 73 days are permissible.

12. The trial Court has observed on a preponderance of probabilities that the defendants' version is correct to the effect that the plaintiffs did not supply the necessary raw material. This is because the plaintiffs did not produce any evidence of any person who had direct knowledge of the negotiations and the terms of the contract. We find no fault with the trial Court in reaching the conclusion that the bill raised by the defendants was reasonable and no credible evidence to the contrary has been pointed out to us.

13. This takes us to the next crucial issue as to the right of the defendants to exercise a lien over the barge in question. Now it must be recalled that the

plaintiffs' case is that three barges belonging to their Director were given to the defendants for repairs and that they were returned after being repaired. There is no dispute that the bill for repairs of those barges was pending. It is in this background that the barge in question, that is, EGL II was handed over to the defendants for repairs and the bill in regard to this was also not paid by the plaintiffs.

14. According to the plaintiffs, the defendants claimed that they would not return the barge unless the bill for the earlier three barges belonging to their Director G.N. Agrawal was also paid up that is to say, they exercised a general lien over the barge in question. The plaintiffs claim that they were willing to pay up the amount of Rs. 74,739/91 towards the repair charges but the defendants did not agree.

15. However, we must turn to the law in this regard. The question of lien on the basis on which the learned counsel for the appellants advanced his argument is governed by Sections 170 and 171 of the Indian Contract Act, 1872, which, alongwith the illustrations, read as follows:-

> **"170. Bailee's particular lien.--** Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect

> of the goods bailed, he has in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.
>
> *Illustrations*
>
> *(a) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.*
>
> *(b) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months credit for the price. B is not entitled to retain the coat until he is paid.*
>
> **171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.--** Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other person have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

16. Mr. Diniz, the learned counsel for the appellants, submitted that the defendants were not entitled to exercise any general lien under Section 171 of the Indian Contract Act, since, under that provision, this lien is exercisable only by a banker, factor, wharfinger, attorney of a High Court and policy-broker, which the defendants are not. This submission of the learned counsel is correct. In fact, the defendants, being in none of the categories mentioned in Section

171, had no right to exercise any general lien. In other words they could not have detained the barge in question, that is, EGL II for non-payment of the bill for repairs of the earlier barges Ganga Jal, Ganga Jamuna and Ganga Tarang. However, the plaintiffs' case is that those three barges did not belong to the plaintiffs but to one of its Directors, that is, G.N. Agrawal.

17. However, the next question is whether the defendants were entitled to exercise a particular lien as contemplated by Section 170 of the Indian Contract Act. We are of the view that the defendants were so entitled since the transaction in question satisfies all the conditions necessary for exercise of a particular lien. Section 170 contemplates the exercise of a particular lien by the bailee where the bailee has rendered any service involving the exercise of labour or skill in respect of the goods bailed. There is no doubt, on the evidence, that the barge was bailed or handed over to the defendants for rendering the service of repairs, which involves the exercise of labour or skill on the part of the defendants. Therefore, the defendants were entitled to retain the barge until they received due remuneration for the services rendered in regard to the barge.

18. Mr. Diniz, the learned counsel for the appellants, submitted that the defendants were only entitled to due remuneration for services and not for charges not agreed upon between the parties. We have, however, negatived the challenge to the bill itself in answer to the first point above and, therefore, we are of the considered opinion that the defendants had a right to exercise a particular lien, eventhough the defendant had no right to exercise a general lien.

19. Mr. Diniz, the learned counsel for the appellants, further submitted that on facts the defendants did not have a right to exercise a particular lien because the plaintiff were always ready and willing to pay a sum of Rs. 74,739/91 in respect of the barge in question, that is, EGL II. We, however, find that the plaintiffs did not make any such unconditional offer to pay the sum aforestated in respect of the barge in question. The plaintiffs offered to pay the said sum in their letter, dated 23rd May 1979, at Exhibit PW1/I, as follows:-

> "....we are prepared to pay you against bill for repair of barge "EGL II" the sum of Rs. 74,739.91 in three instalments on condition of our barge being released by you on making of first payment by us."

It is obvious that the plaintiffs' proposal to pay was in three instalments and, if accepted, would have the

effect of depriving the defendants of their lien on mere receipt of their first instalment. We are satisfied, on the evidence, that the plaintiff had no bonafide intention of satisfying their liability towards repair charges in regard to EGL II. That being so, we are of the view that the defendants were entitled to exercise a particular lien for non-payment of the bill raised by them towards repairs of the barge in question. At this juncture we must observe that the plaintiffs are not entitled to take any advantage of the fact that the defendants demanded payment of the bill for repairs in respect of the three barges belonging to one G.N. Agrawal, the Director, since, even according to the plaintiffs, those barges did not belong to them but to their Director.

20. In the circumstances we are of view that the defendants have a particular lien over the barge EGL II, which was rightly detained by them. We affirm the findings of the trial Court in this regard.

21. The issue regarding handing over of the barge, has rightly been held to be redundant by the trial Court, in view of the admitted fact that the barge has been sold in auction in pursuance of an Order of the Registrar of Co-operative Societies for recovery of dues against the plaintiffs. The learned counsel submitted

that the defendants frustrated the auction by making the barge disappear. However, having regard to the finding above, we do not consider it necessary to answer this issue. Moreover, it appears that there is no evidence in support of the contention on behalf of the appellants.

22. In the result, we fine no merit in the appeal, which is, hereby, dismissed. There shall be no order as to costs.

(S.A. BOBDE)
JUDGE.

(N.A. BRITTO)
JUDGE.

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